APPENDIX B

Offer of Proof

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1) After becoming a licensee on November 1, 1962, it became necessary for Speed-O-Print Business Machines Corp. to raise the prices of all of its machines in order to pay the required royalties thereon. See the annexed schedule of prices and other information.

2) The 6% royalty became a royalty ranging from 80% to 150% when applied to Speed-O-Print's own selling price of the patented developing unit. A 50% trade discount is assumed,* but such discounts vary.

3) The 6% royalty became a royalty ranging from 92% to 245% when applied to Speed-O-Print's manufacturing cost for the patented developing unit.

4) In Speed-O-Print's machines (which accounted for 57% of all machines sold by plaintiff's licensees through September, 1965) the percentage value (in cost figures) of the patented developing unit in relation to the total value of the entire machine, ranges from 8% to 15%.

5) International Photocopy Corp. increased its suggested list prices 15% and cut dealer discounts from 50% to 40% to cover the royalty. This had an adverse effect upon its business and it subsequently went into bankruptcy.

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* In the attached schedule, a trade discount of 50% has been used in the calculations. However, we are currently advised that the Speed-O-Print quantity trade discount is 45%, so that the figures in said schedule will be slightly modified accordingly. (Original footnote.)

Appendix B

6) Savin Business Machines Corp. was unable to absorb the royalty and it was compelled to add it to the prices of its machines. The price of Savin's most popular machine (its 10-inch model) was $99.95 prior to the license and $109.95 after Savin entered into the license agreement to cover the royalty. This was followed by a drop in volume of Savin's machine business under the license agreement, and about a year and a half ago Savin ceased all manufacture and sale of these machines.

7) Inter-Continental Photocopy Corp. consented to judgment and entered into the license agreement under pressure from plaintiff and in view of inquiries from customers as to possible liability under the Eisbein patent.

8) In negotiations for the license, Inter-Continental requested that the royalty be confined to

   a. the patented developing unit per se, and

   b. its own (manufacturer's) selling price or value thereof,

   but plaintiff insisted on applying the royalty to the retail selling price of the entire machine.

9) During license negotiations, Inter-Continental tried to exclude from the "Agreement and Release" any waiver of claims which it might have against plaintiff for damages for violation of the anti-trust laws, but plaintiff strenuously objected. Inter-Continental,

being a much smaller and financially weaker company than plaintiff, was in no position to resist and it was compelled to waive these claims.

10) In order to meet the competition of other manufacturers of diffusion transfer machines, especially plaintiff, Inter-Continental was forced to absorb the royalty which it could ill afford to do. It has been paying royalties on the retail list prices although the retail dealers often discount these prices to their customers. Inter-Continental has suffered severely from its absorption of the royalty.

11) General Aniline and Film Corp. has ceased all manufacture of the licensed machines.

12) Copease Corporation has sold out to another company and is going out of the diffusion transfer machine business.

13) Nashua Corporation (Copy-Cat Division) has gone out of the diffusion transfer machine business and has sold its remaining stock of machines to defendant.

14) Formfoto Manufacturing Company was compelled to consent to judgment and to accept a license under pressure from its customers.

15) Formfoto tried to absorb the royalty without raising its prices, but this left too narrow a margin of profit to survive, and it was forced out of the business of manufacturing the licensed machines.

16) In order to effect a termination of the suit which plaintiff had instituted against it in this Court (62

C 2258), The Fair (Inc.) was forced to make an Offer of Judgment containing an admission that "contrary to the Answer heretofore filed by The Fair (Inc.)" plaintiff

"has not charged prohibitive royalties;

• • •

"has not tied sales of the patented machine to sales of unpatented equipment;"

and The Fair (Inc.) was further compelled to waive and forever relinquish its demand for treble damages under the anti-trust laws;

and The Fair (Inc.) was further compelled to "allow Findings of Fact, [and] Conclusions of Law" to be entered by this Court, including Findings that plaintiff "has not charged prohibitive royalties" and "has not tied patented machine sales to sales of unpatented equipment", and including a Conclusion that plaintiff "has neither violated the anti-trust laws or public policy of the United States nor has Apeco misused the Eisbein Patent";

and The Fair (Inc.) was further compelled to "allow • • • a Final Judgment Order to be entered against it" determining that "The plaintiff has not violated the anti-trust or patent laws of the United States or otherwise misused the Eisbein Patent".

17) Only four manufacturers of diffusion transfer photocopy machines survive in the United States: plaintiff, defendant, Speed-O-Print, Inter-Continental. (Kenro makes an industrial processor for offset plates.)

Appendix B

SPEED-O-PRINT DIFFUSION TRANSFER PHOTOCOPY MACHINES

Model	Retail Price Nov. 1, 1962	Retail Price Nov. 12, 1962	1962 Cost of Entire Machine	1962 Cost of Developer	Percentage Developer to Machine	Manufacturer's Selling Price Entire Machine	Manufacturer's Selling Price of Developer	6% Royalty on Retail Price Entire Machine	Percentage Royalty to Cost of Developer	Percentage Royalty to Manufacturer's Selling Price of Developer
9A	99.00	109.50	48.61	7.17	15%	54.75	8.21	6.57	92%	80%
9B	219.50	229.50	61.92	7.17	12%	114.75	13.77	13.77	192%	100%
9C	279.50	289.50	91.43	7.17	8%	144.75	11.58	17.37	242%	150%
9M	149.50	159.50	60.51	7.17	12%	79.75	9.57	9.57	133%	100%
15A	224.50	234.50	60.00	8.31	14%	117.25	16.42	14.07	169%	85%
15B	269.50	279.50	71.97	8.31	12%	139.75	16.77	16.77	202%	100%
15C	329.50	339.50	96.65	8.31	9%	169.75	15.28	20.37	245%	133%